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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1941

No. 831

■

ERMINIO MORANTE, *Petitioner*

v.

THE PEOPLE OF THE STATE OF NEW YORK

■

PETITIONER'S REPLY
to Respondent's Brief in Opposition to Petition for Writ of Certiorari

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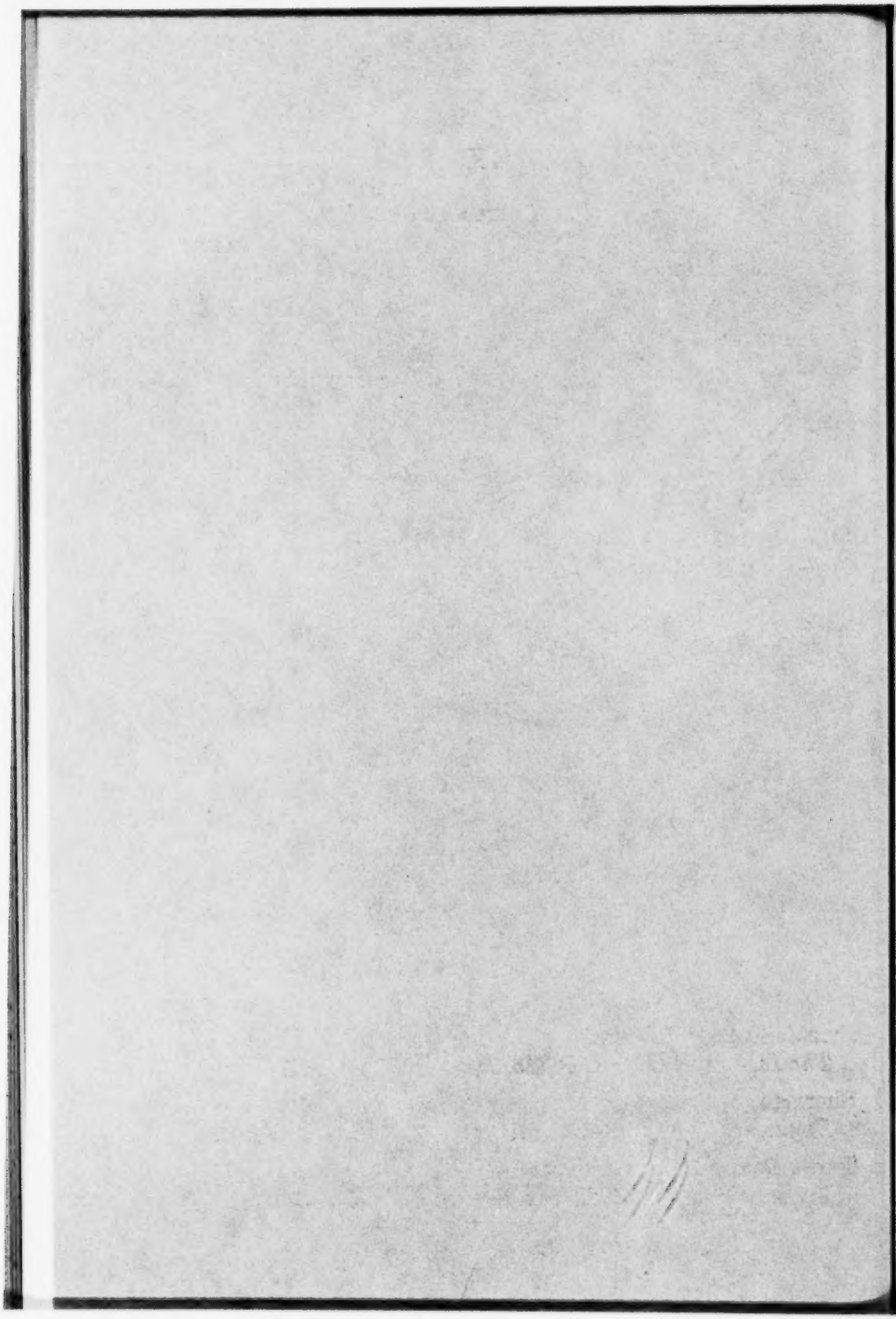

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Respondent manifestly has fallen into the same pit of error as did the trial court and the Westchester County Court when considering the issues involved as a result of an unsuccessful attempt to jump the broad gap between—

a) police power to prohibit Sunday sales of ordinary articles of merchandise upon the streets or from house to house, and

b) the occupation or activity of an ordained minister distributing on streets or at homes of the people literature containing information and opinion (simultaneously inviting and accepting money contributions to aid such work), protected by the Constitution against all sorts of State encroachment.

This gap between the two cannot be bridged or leaped over by law.

Respondent's entire brief is based upon the false premise that there is no distinction between "selling" *literature* and selling ordinary articles of merchandise.

Respondent contends that the law is regulatory. It is not.

The statute itself says 'selling or offering for sale upon Sunday is *prohibited*'.

The fact that the statute tacitly allows distribution of literature free of charge on Sunday is conclusive proof that its aim is not *regulation*.

The essence of respondent's brief is primarily a complaint directed against the *subject matter* of the literature distributed; and not against the taking of money contributions from some receiving such literature. In other words, the taking of money is not claimed by respondent to be 'serious interruption of the community's repose and religious liberty'. (Respondent's brief, pages 3, 4, 7 and 9.)

In this connection it is interesting to note that the undisputed evidence shows that petitioner did not provoke a breach of the peace, did not incite such, did not assault or threaten bodily harm, did not intrude or act with force or arms, and was not guilty of truculent bearing or personal abuse. On the contrary, he acted properly in all respects.

The undisputed evidence showed that no person objected to the content of the literature.

Such literature is an expression of truth and opinion based on exhaustive present-day investigation of "fifth column" activity of the named religious organization (acting under written agreements ["concordats"] with Mussolini and Hitler) in the democracies, including the United States of America. This subject matter is privileged from invasion by the State, according to injunction of the Fourteenth Amendment as held by this Court in *Cantwell* v. *Connecticut*, 310 U. S. 296, part *Second* of Opinion.

The pamphlet's charge that the Roman Catholic Hierarchy is in a conspiracy to destroy all democracies and the liberties of the people is not a new, unprovable one made exclusively and initially by the writer of this pamphlet.

That charge as relating to that organization in this nation is amply supported by well informed and highly respected authority in public life during more than a century past. A few of many authorities follow:

Samuel F. B. Morse, renowned inventor of the telegraph, wrote a book entitled *Foreign Conspiracy Against the Liberties of the United States,* published at New York in 1836 by Van Nostrand & Dwight (now D. Van Nostrand Co., Inc., New York), very widely circulated at the time. It was based upon his personal experience and investigations in Rome and at the Vatican. Morse's entire book constituted a warning to the American people whose liberties he was jealous to protect against invasion by the ROMAN CATHOLIC HIERARCHY. See also *The Life of Samuel F. B. Morse,* by Samuel Irenaeus Prime (1875), New York, D. Appleton & Co.

In 1836 the writers of the Texas Declaration of Independence recognized the same conspiracy and branded the Roman Catholic Hierarchy as the "eternal enemies of civil liberty, the ever-ready minions of power, and the usual instruments of tyrants". (R. 22, 23; Vernon Centennial Edition, Texas Revised Statutes, 1936.)

In 1883 *Engineer Corps of Hell,* written by Edwin Allen Sherman, traced the events leading up to Lincoln's assassination at the direction of the Vatican and warned the American people against the Roman Catholic Hierarchy's expressed determination to destroy this democracy. See also *Responsibility for the Assassination of Abraham Lincoln,* written in 1897 by Thomas Mealey Harris, Brigadier General, U.S.A., a member of the military commission before which the Jesuit-directed Catholic and non-Catholic coconspirators of John Wilkes Booth were tried and found guilty of assassinating President Lincoln.

E. Boyd Barrett, admitted ex-Jesuit, in 1935 wrote *Rome Stoops to Conquer,* published by Julian Messner, Inc., New York. That whole book carefully presents proof showing the aim of the Roman Catholic Hierarchy to destroy the

United States and subjugate the entire population to Vatican domination under totalitarian rule.

See also *Inside Europe,* written in 1938 by John Gunther. Therein is portrayed the "fifth column" activity of the Roman Catholic Hierarchy to advance and firmly establish Hitler's "new order".

Each of the aforementioned publications is available in the Congressional Library at Washington.

Thus it is seen that the questioned pamphlet relates to matters of fact and opinion shielded by the Constitution, and in which every honest lover of liberty and righteousness is deeply interested, be he Catholic, Protestant or Jew, bond or free. The pamphlet cannot properly be said to 'preach religious hatred'. Its dissemination is not "calculated to foment public disorder", as wrongfully charged by respondent.

Although the literature is objectionable to respondent in this case, it does not appear that any of the residents of Mount Kisco who received the pamphlet from petitioner objected to its contents. Therefore there is no evidence to support respondent's claim that the literature 'interrupts the repose and religious liberty of the community'. As was said in *Dearborn Publishing Co.* v. *Fitzgerald,* 271 F. 479, and in *Epoch P. Co.* v. *Davis,* 19 Ohio (NP) 465, it is an insult to Catholic residents of Mount Kisco to impute to them performance of acts creating public disorder by reason of reading the pamphlet. If *they* did so act, it would be the duty of the respondent to arrest and prosecute *them* and not the distributor of the pamphlet innocently and lawfully exercising his constitutional rights for the public welfare.

Respondent erroneously declares that in the cases cited, particularly *State* v. *Mead,* 300 N. W. 523, involving an identical Iowa statute, the evidence did not show Jehovah's witnesses to be "selling" the literature. There the court found facts identical with those found here and set aside the conviction.

In that case it was also contended that the content of the

literature constituted 'disturbing a worshiping assembly or private family'. There the court said:

> " . . . We are not prepared to hold that calling at private homes in the middle of the sabbath day, *however unwelcome the caller may be,* in itself, constitutes a desecration of the sabbath." [Italics added]

Respondent asserts that petitioner did not claim that he was commanded by Almighty God to go from house to house with the literature. The record impeaches that assertion: Exhibit A (R. 4, 5) specifically provides that petitioner, as one of Jehovah's witnesses, is commanded to obey Almighty God in preaching the gospel by offering booklets to people at their homes according to Acts 20: 20 and other cited injunctions of Holy Writ. In its opinion the trial court recognized that defendant was distributing and "selling literature as an ordained minister, that being his way of worshiping God on Sunday". R. 24.

Respondent says that petitioner did not attend a seminary or college, thereby implying petitioner is not entitled to be *called* a minister. It should be remembered that Jesus Christ's apostle Peter and many other faithful ministers of the Lord did not attend a parochial school. The record does not bear out the respondent's statement that no study, preparation or examination was necessary before petitioner's ordination. Before such ordination petitioner attended regularly in classes of study conducted by Jehovah's witnesses, studying the Bible, which is the only and true source of knowledge, wisdom and understanding for any minister of Almighty God.

We submit that it was the purpose of the statute in question to protect rights of the petitioner (judicially found to be an ordained minister worshiping Almighty God in the way wrongfully challenged by respondent) as well as to protect rights of religious clergymen who, in pursuing their ecclesiastical business on Sundays, *publicly* "sell" candles,

rosaries, prayer books and other literature. Incidentally, it is noteworthy that the statute does not specifically except such public "sales" by said clergymen.

Respondent contends that the pamphlet states "Jehovah's witnesses are not a sect, not a religious organization". It is to be noticed that immediately following that quotation the explanation is given and Jehovah's witnesses are shown to be true ordained ministers and ambassadors of Jesus Christ, worshiping Almighty God.

Admittedly, constitutional freedom of worship is not limited to practitioners of religion, whether of Mohammedan, Buddhist, Jewish, Shinto, so-called Protestant or the numerous varieties of catholic and other denominations, but extends also to protect every sincere servant of Almighty God.

For reasons above stated the writ of certiorari should be granted as prayed for in the petition.

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